IN THE HIGH COURT OF KARNATAKA AT BENGALURU

DATED THIS THE 1ST DAY OF OCTOBER, 2024

R

BEFORE

THE HON'BLE MR JUSTICE M.NAGAPRASANNA

WRIT PETITION NO. 23848 OF 2024 (GM-RES)

BETWEEN:

PRADOSH S.RAO
S/O SUBBARAO
AGED ABOUT 40 YEARS
RESIDING AT NO.56, J.P.ROAD
80FT ROAD, GIRINAGAR 1ST PHASE
BANASHANKARI 3RD STAGE
BENGALURU - 560 085.

...PETITIONER

(BY SRI HITESH GOWDA B. J., ADVOCATE A/W.,
SRI ADITYA D., ADVOCATE AND
SRI SANTOSH V., ADVOCATE)

AND:

1. THE STATE OF KARNATAKA
THROUGH ITS ADDITIONAL CHIEF SECRETARY
(HOME) AND SECRETARY TO GOVERNMENT (PCAS)
DEPARTMENT OF HOME
REP. BY STATE PUBLIC PROSECUTOR
HIGH COURT OF KARNATAKA
BENGALURU - 560 001.

2. THE DIRECTOR GENERAL OF PRISONS
AND CORRECTIONAL SERVICES NO.4
SHESHADRI ROAD, GANDHINAGAR
BENGALURU - 560 009.

3. THE CHIEF SUPERINTENDENT
CENTRAL PRISON-BANGALORE
PARAPPANA AGRAHARA
BENGALURU – 560 068.

…RESPONDENTS

(BY SRI B.A.BELLIAPPA, SPP A/W.,
SRI B.N.JAGADEESHA, ADDL. SPP)

THIS W.P. IS FILED UNDER ARTICLES 226 AND 227 OF THE CONSTITUTION OD INDIA PRAYING TO QUASH THE IMPUGNED ORDER OF THE LD.XXIV ADDITIONAL CHIEF JUDICIAL MAGISTRATE, BENGALURU DTD. 27.08.2024 IN CRIME NO. 250/2024 DIRECTING FOR TRANSFER OF THE PETITIONER WHO IS THE UNDER-TRIAL PRISONER (UTR NO. 6109/2024) FROM THE CENTRAL PRISON-BANGALORE TO CENTRAL PRISON-BELAGAVI AT ANNX-A IN THE INTEREST OF JUSTICE.

THIS PETITION, COMING ON FOR ORDERS, THIS DAY, ORDER WAS MADE THEREIN AS UNDER:

CORAM: **HON'BLE MR JUSTICE M.NAGAPRASANNA**

ORAL ORDER

The petitioner / accused No.14 in Crime No.250 of 2024 registered for offences punishable under Sections 302 and 201 of the IPC is knocking at the doors of this Court calling in question an order dated 27-08-2024 passed by the XXIV Additional Chief Judicial Magistrate, Bengaluru, directing transfer of the petitioner, an under-trial prisoner, from Bangalore Central Prison to Belagavi.

2. Heard Sri B.J. Hitesh Gowda, learned counsel appearing for the petitioner and Sri B.A. Belliappa learned State Public Prosecutor appearing for the respondents.

3. The facts, in brief, germane are as follows:-

The petitioner, as observed above, is arraigned as accused No.14. A crime comes to be registered by the Kamakshipalya Police on 09-06-2024 against several accused, in which accused No.2 is Darshan. The petitioner was arrested the next day *i.e.,* on 10-06-2024 and remanded to judicial custody along with others. The issue in the *lis* does not pertain to enlargement of the petitioner on bail or any other issue on its merit. The 3rd respondent submits a requisition to the learned Magistrate to transfer all the accused in Crime No.250 of 2024 to different prisons in the State of Karnataka. The reason is that, on the print electronic media, photographs of accused No.2, Darshan sitting along with a rowdy, Wilsongarden Naga, appeared, in which he is said to be consuming tea, holding a cigarette. On the ground that the

photograph would demoralize witnesses and would provide room for suspicion in the eyes of general public on differential treatment being given to Darshan, the under-trial prisoners were sought to be transferred. The petitioner was not in the scene. The petitioner then learning that the learned Magistrate has directed his transfer even, on 29-08-2024 approaches this Court in the subject petition.

4. A co-ordinate bench of this Court on the very day *i.e.,* on 29-08-2024, granted stay of the order *qua* the petitioner only, if he is not already shifted. It is said that the petitioner/accused No.14 was in transit when the order was passed. Therefore, the order did not bring in any benefit to the petitioner. He is transferred to Belagavi Central Prison as an under-trial prisoner bearing a number - UTR 6109 of 2024. The petitioner is knocking at the doors of this Court contending that for no fault of his, he has been shifted.

5. The learned counsel appearing for the petitioner would vehemently contend that the petitioner/accused No.14 was not in the scene, in the company of Darshan, accused No.2 or

Wilsongarden Naga, as the case would be. He is housed in a different cell far away from all the accused. What was happening in the prison *qua* Darshan was not within the knowledge of the petitioner. He would submit that the learned Magistrate without application of mind has transferred the petitioner to a different jail. He would allege that when the wife of the petitioner went to meet him, shocking revelations were made by the husband / accused No.14, that he was housed in an Andheri Cell, a cell with darkness for 15 hours and is made to sit in front of the camera for 8 hours, on the score that he is under observation.

6. The learned State Public Prosecutor-I refutes the submissions of the learned counsel for the petitioner; the petitioner is neither in Andheri Cell nor he is being subjected to torture of 15 hours in darkness or to sit 8 hours before the camera. Nonetheless this Court on 25-09-2024 passed the following order:

"**ORAL ORDER**

The petitioner/accused No.14 in Crime No.250/2024 is given a number, Under Trial Prisoner UTR 6109/2024 and was housed in Central Prison, Bengaluru. On certain

incidents that had cropped up later all the accused involved in Crime No.250/2024 were sought to be shifted from Central Prison, Bengaluru to different Prisons of the State. The petitioner lands in Belagavi.

Learned counsel for the petitioner has moved this matter on the score that he is being harassed by the Jail Authority inside the Prison. He has filed and application in which the averments read as follows:

> "4. I state that, the Petitioner was transferred from Bangalore Central Prison to Belagavi Central Prison on 29.08.2024. On the very same day while the Petitioner was being transferred to the Central Prison at Belagavi, the Prison Superintendent awaiting the arrival of the Petitioner issued a statement that for security reasons, the Petitioner will be kept at 'Andheri Cell' and that the Jailer and his seven staff will keep a watch on the Petitioner in the prison round the clock.
>
> 5. I state that, the Petitioner since then has been put to constant harassment and mentally tortured by the prison authorities. The Petitioner is made to sit below the camera for 8 hours and is locked in the cell for about 15 hours a day. The Petitioner's room is searched 3 times every day, further the Petitioner's watch and bed-sheet are taken in guise of checking and the same has not been returned to the Petitioner."

It is the allegation of the petitioner that he is now housed in a dark cell in the Jail and he is made to sit in front of the camera for 8 hours saying that he is under observation and he is locked in a cell for 15 hours in a day and several other things a kind of treatment that the under trial prisoners would not be meted out, is the submission of the learned counsel appearing for the petitioner, apart from projecting several ailments that he has.

Learned SPP -I submits that copy is not served upon him and he would seek instructions and make his submissions.

Therefore, the State shall explain as to why he is kept in a dark cell and why he is made to sit for 8 hours in a day in front of the camera and for 15 hours in a day he is locked inside the room without permitting him any movement.

> This affidavit is necessary in the light of an interim order granted by the Coordinate Bench of this Court on 29.08.2024 stalling the shifting of the petitioner to Central Prison, Belagavi if he had not already been shifted. It is said that he was in transit.
>
> Instructions be sought on all these and an affidavit be filed on the next date of hearing i.e., on **27.09.2024 at 2.30 p.m."**

An affidavit was directed to be filed by the Jail authorities on the allegation of the petitioner. The affidavit comes about denying all the allegations. Therefore, the matter is heard.

7. The learned State Public Prosecutor – I, Sri B.A.Belliappa, taking this Court through the affidavit seeks to defend the action of shifting all the prisoners in Crime No.250 of 2024 so as to send a message to the Society that the accused are not being given differential or separate treatment and are treated like any other prisoner. He would seek to justify the action and dismissal of the petition.

8. I have given my anxious consideration to the submissions made by the respective learned counsel for the parties and have perused the material on record.

9. What triggered the subject decision to shift is, the picture of accused No.2 - Darshan sitting along with a convict by name Wilsongarden Naga and sipping tea and having a chat in the garden of Parappana Agrahara, Central Jail. It is said that it is a garden, where the under-trials or convicts are permitted to meet and spend time. There is no dispute about this fact. Since accused No.2 was seen with the said convict and was holding a cigarette and the other person was chewing tobacco, a requisition comes to be made before the learned Magistrate on 27-08-2024. The requisition reads as follows:

"ಸಂಖ್ಯೆ: ಕೇಕಾಬೆಂ/ವಿ.ಬಂ.ವಿ/ 7928/2024 ದಿನಾಂಕ: 27–08–2024.

ರವರಿಗೆ,

ಗೌ॥ 24ನೇ ಅಪರ ಮುಖ್ಯ ಮಹಾನಗರ ದಂಡಾಧಿಕಾರಿಗಳು,
(24ನೇ ಎ.ಸಿ.ಎಂ.ಎಂ),
ಬೆಂಗಳೂರು ನಗರ.

ಮಾನ್ಯರೇ,

ವಿಷಯ: 'ಶಿಸ್ತು ಕ್ರಮದ ಆಧಾರದ ಮೇಲೆ ವಿಚಾರಣಾ ಬಂದಿಗಳನ್ನು ರಾಜ್ಯದ ಬೇರೆ ಬೇರೆ ಕಾರಾಗೃಹಗಳಿಗೆ ವರ್ಗಾವಣೆ ಮಾಡಲು ಅನುಮತಿ ನೀಡುವಂತೆ ಕೋರಿ.

ಉಲ್ಲೇಖ: 1. ಪೊಲೀಸ್ ಆಯುಕ್ತರು, ಬೆಂಗಳೂರು ನಗರ ರವರ ಪತ್ರ ಸಂಖ್ಯೆ: ಸಿಸಿಆರ್‌ಬಿ/ಜೆಐಎಎಸ್/ಜೈ.ವ/05/2024, ದಿನಾಂಕ:26-08-2024.

2. ಕಾರಾಗೃಹಗಳ ಉಪಮಹಾನಿರೀಕ್ಷಕರು, ದಕ್ಷಿಣ ವಲಯ, ಬೆಂಗಳೂರು ರವರ ಜ್ಞಾಪನ ಪತ್ರ ಸಂಖ್ಯೆ: ಕಾಉಮ/ದವ/ಜೆ1/1702/2024–25, ದಿನಾಂಕ:27–08–2024..

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ಮೇಲ್ಕಂಡ ವಿಷಯ ಹಾಗೂ ಉಲ್ಲೇಖಗಳಿಗೆ ಸಂಬಂಧಿಸಿದಂತೆ ಗೌ॥ ನ್ಯಾಯಾಲಯದಲ್ಲಿ ವಿನಂತಿಸಿ ಒಪ್ಪಿಸುವುದೇನೆಂದರೆ. ಈ ಕೆಳಕಂಡ ವಿಚಾರಣಾ ಬಂದಿಗಳು (ಚಿತ್ರಮರ್ಗದ ರೇಣುಕಾಸ್ವಾಮಿ ಕೊಲೆ ಪ್ರಕರಣದ ಆರೋಪಿಗಳು) ಸಿ.ಆರ್ 250/2024 ರ ಕಾಮಾಕ್ಷಿಪಾಳ್ಯ ಪೊಲೀಸ್ ಠಾಣೆ ಪ್ರಕರಣದಲ್ಲಿ ವಿವಿಧ ದಿನಾಂಕಗಳಂದು ಈ "ಕಾರಾಗೃಹದಲ್ಲಿ ವಿಚಾರಣಾ ಬಂದಿಗಳಾಗಿ ದಾಖಲಾಗಿರುತ್ತಾರೆ.

ಕ್ರ ಸಂ.	ವಿಚಾರಣಾ ಬಂದಿ ಸಂಖ್ಯೆ	ವಿಚಾರಣಾ ಬಂದಿಯ ಹೆಸರು	ವರ್ಗಾವಣೆ ಮಾಡುವ ಕಾರಾಗೃಹ
1	6106/24	ಎ-2 ದರ್ಶನ್ ತಂದೆ ಲೇಟ್ ತೂಗುದೀಪ ಶ್ರೀನಿವಾಸ.	ಕೇಂದ್ರ ಕಾರಾಗೃಹ, ಬಳ್ಳಾರಿ
2	6025/24	ಎ-3 ಪುಟ್ಟುಸ್ವಾಮಿ @ ಪವನ ತಂದೆ ಕೆಂಪಲಕ್ಕಯ್ಯ	ಕೇಂದ್ರ ಕಾರಾಗೃಹ, ಮೈಸೂರು
3	6026/24	ಎ-4 ರಾಘವೇಂದ್ರ ತಂದೆ ಲೇಟ್ ನಾಗರಾಜ	ಕೇಂದ್ರ ಕಾರಾಗೃಹ, ಮೈಸೂರು
4	6027/24	ಎ-5 ನಂದೀಶ್ ತಂದೆ ಶ್ರೀನಿವಾಸಯ್ಯ	ಕೇಂದ್ರ ಕಾರಾಗೃಹ, ಮೈಸೂರು
5	6028/24	ಎ-6 ಜಗದೀಶ @ ಜಗ್ಗ ತಂದೆ ರಾಜಪ್ಪ	ಕೇಂದ್ರ ಕಾರಾಗೃಹ ಶಿವಮೊಗ್ಗ
6	6107/24	ಎ–9 ಧನರಾಜ ಡಿ @ ರಾಜು ತಂದೆ ದಿನೇಶ್	ಕೇಂದ್ರ ಕಾರಾಗೃಹ, ಧಾರವಾಡ
7	6108/24	ಎ–10 ವಿನಯ ವಿ ತಂದೆ ಲೇಟ್ ವೆಂಕರೆಡ್ಡಿ	ಕೇಂದ್ರ ಕಾರಾಗೃಹ,ವಿಜಯಪುರ
8	6030/24	ಎ–11 ನಾಗರಾಜ ತಂದೆ ಲೇಟ್ ರಾಚಯ್ಯ	ಕೇಂದ್ರ ಕಾರಾಗೃಹ ಗುಲಬರ್ಗಾ
9	6031/24	ಎ–12 ಲಕ್ಷ್ಮಣ ತಂದೆ ಲೇಟ್ ಮರಿಯಪ್ಪ	ಕೇಂದ್ರ ಕಾರಾಗೃಹ ಶಿವಮೊಗ್ಗ
10	6109/24	ಎ–14 ಪ್ರದೋಷ್ ತಂದೆ ಸುಬ್ಬರಾವ್	ಕೇಂದ್ರ ಕಾರಾಗೃಹ ಬೆಳಗಾವಿ

ಮುಂದುವರೆದು ಒಪ್ಪಿಸುವುದೇನೆಂದರೆ, ಕಾಮಾಕ್ಷಿಪಾಳ್ಯ ಪೊಲೀಸ್ ಠಾಣೆ ಮೊ. ಸಂ:250/2024 (ರೇಣುಕಾಸ್ವಾಮಿ ಕೊಲೆ) ಪ್ರಕರಣದಲ್ಲಿ ದಸ್ತಗಿರಿಯಾಗಿರುವ ಚಿತ್ರ ನಟ ದರ್ಶನ್ ಮತ್ತು ಸಹ ಆರೋಪಿಗಳು ಕೇಂದ್ರ ಕಾರಾಗೃಹದಲ್ಲಿ ವಿಚಾರಣಾ ಬಂದಿಗಳಾಗಿರುತ್ತಾರೆ. ಮೇಲ್ಕಂಡ ವಿಚಾರಣಾ ಬಂದಿಗಳು ಈ ಕಾರಾಗೃಹದಲ್ಲಿ ಬೇರೆ ಬೇರೆ ಪ್ರಕರಣಗಳಲ್ಲಿ ದಸ್ತಗಿರಿಯಾಗಿರುವ ಕೆಲವು ರೌಡಿಪಟ್ಟಿ ಆಸಾಮಿಗಳೊಂದಿಗೆ ಪ್ರಮುಖವಾಗಿ ವಿಲ್ಸನ್ ಗಾರ್ಡನ್ ನಾಗ ಹಾಗೂ ಇತರೇ ರೌಡಿ ಹಿನ್ನಲೆಯುಳ್ಳ ವಿಚಾರಣಾ ಬಂದಿಗಳೊಂದಿಗೆ ಶಾಮೀಲಾಗಿ ಕಾನೂನು ಬಾಹಿರ ಚಟುವಟಿಕೆಗಳಲ್ಲಿ ಭಾಗಿಯಾಗುತ್ತಿರುವ ಬಗ್ಗೆ ಪರಪ್ಪನ ಅಗ್ರಹಾರ ಪೊಲೀಸ್ ಠಾಣೆಯಲ್ಲಿ 02 ಪ್ರತ್ಯೇಕ ಪ್ರಕರಣಗಳು ದಾಖಲಾಗಿರುತ್ತವೆ. (ಪ್ರತಿ ಲಗತ್ತಿಸಿದೆ).

ಅಲ್ಲದೇ, ಇತ್ತೀಚೆಗೆ ದೃಶ್ಯ ಮಾಧ್ಯಮ / ದಿನ ಪತ್ರಿಕೆಗಳಲ್ಲಿಯೂ ಸಹಾ ಕೊಲೆ ಆರೋಪಿ ದರ್ಶನ್ ತಂಡದೊಂದಿಗೆ ಕುಖ್ಯಾತ ರೌಡಿ ಆಸಾಮಿ ವಿಲ್ಸನ್ ಗಾರ್ಡನ್ ನಾಗ ಚಹಾ ಸೇವನೆ ಮಾಡಿಕೊಂಡು ಔಪಚಾರಿಕವಾಗಿ ಚರ್ಚಿಸುತ್ತಿರುವ ಫೋಟೋಗಳು ಭಿತ್ತರಗೊಂಡಿರುವುದು ಇರುತ್ತದೆ. ಇದರಿಂದಾಗಿ ಪ್ರಕರಣದ ಸಾಕ್ಷಿಗಳ ಮೇಲೆ ಪ್ರತಿಕೂಲವಾದ ಪರಿಣಾಮಗಳು ಉಂಟಾಗುವ ಸಾಧ್ಯತೆ ಇರುತ್ತದೆ. ಅಲ್ಲದೆ, ಸಾರ್ವಜನಿಕವಾಗಿ ವಿಚಾರಣಾಧೀನ ಖೈದಿಗಳಿಗೆ ಜೈಲಿನಲ್ಲಿ ರಾಜಾತಿಥ್ಯ ನೀಡಲಾಗುತ್ತಿದೆ ಎಂಬ ಸಂಶಯಕ್ಕೆ ಅವಕಾಶವಾಗಿರುತ್ತದೆ. ಕೇಂದ್ರ ಕಾರಾಗೃಹದಲ್ಲಿ ನಡೆಯುತ್ತಿರುವ ಕಾನೂನು ಬಾಹಿರ ಚಟುವಟಿಕೆಗಳನ್ನು ಪರಿಣಾಮಕಾರಿಯಾಗಿ ನಿಯಂತ್ರಿಸಲು ಹಾಗೂ ಕೊಲೆ, ಪ್ರಕರಣದ ಆರೋಪಿಗಳನ್ನು ಕುಖ್ಯಾತ ರೌಡಿ ಆಸಾಮಿಗಳ ಸಂಪರ್ಕದಿಂದ ಬೇರ್ಪಡಿಸಲು ವಿಚಾರಣಾ "ಬಂದಿಯಾಗಿರುವ ಚಿತ್ರ ನಟ ದರ್ಶನ್ ಮತ್ತು ತಂಡದವರನ್ನು ಬೇರೆ ಬೇರೆ ಜಿಲ್ಲಾ ಕಾರಾಗೃಹಗಳಿಗೆ ಬದಲಾವಣೆ ಮಾಡುವುದು ಸೂಕ್ತವಾಗಿರುತ್ತದೆ. ಉಲ್ಲೇಖ (1) ರಂತೆ ಪೊಲೀಸ್ ಆಯುಕ್ತರು, ಬೆಂಗಳೂರು ನಗರ ರವರು 'ವರದಿಯಂತೆ ಹಾಗೂ ಉಲ್ಲೇಖ (2) ರ ಕಾರಾಗೃಹಗಳ ಉಪಮಹಾನಿರೀಕ್ಷಕರು, ದಕ್ಷಿಣ ವಲಯ, ಬೆಂಗಳೂರು ರವರ ಜ್ಞಾಪನ ಪತ್ರದಂತೆ, ಕಾಮಾಕ್ಷಿಪಾಳ್ಯ ಪೊಲೀಸ್ ಠಾಣೆ ಮೊ.ಸಂ 250/2024 ಪ್ರಕರಣದಲ್ಲಿ ದಸ್ತಗಿರಿಯಾಗಿರುವ ಆರೋಪಿಗಳನ್ನು (ದರ್ಶನ್ ಮತ್ತು ಸಹ ಆರೋಪಿಗಳು) ಮೇಲ್ಕಾಣಿಸಿದ ಪಟ್ಟಿಯಲ್ಲಿ ನಮೂದಿಸಿರುವ ರಾಜ್ಯದ ಬೇರೆ ಬೇರೆ ಕೇಂದ್ರ ಕಾರಾಗೃಹಗಳಿಗೆ ಸ್ಥಳಾಂತರಿಸಲು ಗೌ॥ ನ್ಯಾಯಾಲಯದಲ್ಲಿ ಅನುಮತಿ ನೀಡಬೇಕೆಂದು ವಿನಂತಿಸಿ .ಒಪ್ಪಿಸಿದೆ

ಗೌರವಗಳೊಂದಿಗೆ,

ತಮ್ಮ ನಂಬುಗೆಯ,

ಸಹಿ/–
27.08.2024
ಮುಖ್ಯ ಅಧೀಕ್ಷಕರು
Chief Superintendent
ಕೇಂದ್ರ ಕಾರಾಗೃಹ, ಬೆಂಗಳೂರು
Central Prison, Bengaluru”

(Emphasis added)

Based on the said requisition, comes the impugned order. The impugned order reads as follows:

> “Case is advanced in view of requisition made by Chief Superintendent, Central Prison, Bengaluru. The Chief Superintendent has filed requisition stating that the accused No.2 by name Dharshan, S/o Late Thugu Deepa Srinivas and

others co-accused are under trial prisoners are involving illegal activities with other accused person who are mentioned in Rowdy sheeter by name Wilson Garden Naga and other accused in the Central Prison, Bengaluru. **Further, there is publishing in Media in respect of accused by name Dharshan is having Tea with Rowdy Wilson Garden Naga. Therefore, it causes the influence over the witnesses in the present case. To control illegal activities in the Central Prison premises and to maintain to distance from the Rowdy sheeters in the Jail premises along with under prisoners trails. It is necessary to shift the aforesaid accused at various central prisons as per the requisition. Further, in response to the illegal activities made in the premises of Central Prison the case is registered in Crime No.419/2024 Parapana Agrahara in P.S. against the Dharshan, Dharma and Sathya. Therefore, the Jail Authorities have made requisition to shift the accused Nos.2 to 6 & 9 to 12 & 14 at various Central Prisons.**

Perused the materials on record. The requisition made by the Jail Authorities at this stage are justifiable and deserves to be accepted. Hence I proceed to pass the following:

ORDER

The requisition made by the Chief Superintendent of Central Prison is hereby accepted. Accordingly the Chief Superintendent, Central Prison, Bengaluru is hereby directed to transfer 1) Accused No.2 by name Dharshan, S/o Late Thugudeepa Srinivas (**UTP NO.6106/2024**) to Central Prison, Bellary, 2)Accused No.3 Puttuswamy @ Pavan, S/o Kempalakkaiah (**UTP NO.6025/2024**), 3) Accused NO.4 - Raghavendra, S/o Late Nagaraj, (**UTP NO. 6026/2024**), 4) Accused No.5-Nandeesh, S/o Srinivasaiah, (**UTP NO.6027/2024**) accused Nos.3 to 5 to Central Prison, Mysuru, 5) Accused No.6- Jagadeesh @ Jagga S/o Rajappa (**UTP NO.6028/2024**), to Central Prison, Shivamogha, 6) Accused No.-9- Dhanaraj.D@ Raju S/o Dinesh, (**UTP No.6107/2024**), to Central Prison, Dharwad, 7) Accused No.10-Vinay. V S/o Late Venkatareddy (**UTP No.6108/2024**), to Central Prison, Vijaypur. 8) Accused No.11- Nagaraj, S/o Late Rachaiah (**UTP No.6030/2024**) to Central Prison, Gulbarga 9) Accused No.12-Lakshman S/o Late Mariayappa (**UTP NO.6031/2024**), to Central Prison, Shivamoga, 10) Accused No.14-Pradosh S/o Subbarao (**UTP NO.6109/2024**) to Central Prison, Belagavi with following conditions:

1. The Jail Authorities have independently arrange for accused Nos.2 to 6 & 9 to 12 and 14 without any involvement of IO.

2. The Jail Authorities at Central Prison, Bengaluru, Bellary, Mysore, Shivamoga, Dharwad, Vijaypur, Gulbarga and Belagavi shall very much adhere to the rules contemplated under Jail Manual while shifting the aforesaid accused persons. Further the family members of above stated accused persons shall be at liberty to visit the aforesaid accused persons either virtually in the electronic mode or physically as per the Jail manual.

Office is issue intimation to Central Prison, Bengaluru to transfer accused Nos: 2 to 6 & 9 to 12 and 14 forthwith.

Call on 28.08.2024."

(Emphasis added)

All that the learned Magistrate records is that, there is a media publication in respect of accused No.2, by name Darshan having tea with a rowdy Wilsongarden Naga. Therefore, it causes influence over the witnesses in the present case. To control illegal activities in the Central Prison premises and to distance the rowdy sheeters in the jail premises from under-trial prisoners, the requisition was made. The learned Magistrate allows the requisition without even a semblance of application of mind. Whatever has been asked in the requisition is granted to the prosecution. The petitioner/accused No.14 is transferred to Central Prison, Belagavi. The petitioner is said to have been transferred to a cell in Belagavi pursuant to the direction of the learned Magistrate.

10. A coordinate bench of this Court though sought to interdict, but with a rider that the interim order would operate only if he is not already shifted. Since the petitioner was in transit, the shifting became complete. The petitioner is said to be suffering from certain ailments. The prescription of medication of the petitioner assumes certain significance. It reads as follows:

> **"Andheri**
>
> UTP: 2894 - Name: Pradosh S/o Subharav, Age 40
>
> Wt: 74 , HT: 171, Place: Bengaluru
>
> Date of Add: 29-08-2024/4-09-2024
>
> B/G: A+ HBs Ag: Neg HIV: N.R
>
> Treatment:4 Sep 2024
>
> H.H.R.C. Form filled"

(Emphasis added)

The prescription indicates that the petitioner is in an Andheri Cell. The learned State Public Prosecutor seeks to defend the action by submitting that the name of the Cell is Andheri. It is rather surprising that instead of a number given to the cell, name is given and it is 'Andheri'. The submission to say the least, is preposterous, as the pictures where the petitioner is

housed show it to be No.12. Therefore, the lurking doubt of the wife who visited the petitioner appears to be correct, that he was placed in an Andheri Cell. The petitioner is still an under-trial prisoner. Placing an under-trial prisoner in an Andheri Cell is unknown to law, unless grave circumstance ensue. Shifting of under-trial prisoners cannot be at the whim and fancy of the prosecution and such orders when sought, the learned Magistrates ought to apply their mind. If shifting had to be at all done, it could be shifting of accused No.2, Darshan, as he who was in the scene, in the company of others, with a coffee sipping and cigarette. The petitioner who is away in some cell is penalized for the act of accused No.2. It is not that the prisoner, can choose the prison. Once he is housed in a jurisdictional prison, as an under-trial, to shift him to any other prison there must be a cogent reason, and such orders of shifting must bear application of mind. The Apex Court in the case of ***STATE OF MAHARATHTRA v. SAEED SOHAIL SHEIKH*** reported in ***(2012) 13 SCC 192,*** while answering an identical circumstance has held as follows:

> **"25. The forensic debate at the Bar was all about the nature of the power exercisable by the court while permitting or refusing transfer. We have, however, no hesitation in holding that the power**

exercisable by the court while permitting or refusing transfer is "judicial" and not "ministerial" as contended by Mr Naphade. Exercise of ministerial power is out of place in situations where quality of life or the liberty of a citizen is affected, no matter he/she is under a sentence of imprisonment or is facing a criminal charge in an ongoing trial. That transfer of an undertrial to a distant prison may adversely affect his right to defend himself but also isolate him from the society of his friends and relations is settled by the decision of this Court in Sunil Batra (2) v. Delhi Admn.[(1980) 3 SCC 488 : 1980 SCC (Cri) 777 : AIR 1980 SC 1579] wherein this Court observed: (SCC p. 510, para 48)

> "48. Inflictions may take many protean forms, apart from physical assaults. Pushing the prisoner into a solitary cell, denial of a necessary amenity, and, more dreadful sometimes, transfer to a distant prison where visits or society of friends or relations may be snapped, allotment of degrading labour, assigning him to a desperate or tough gang and the like, may be punitive in effect. Every such affliction or abridgment is an infraction of liberty or life in its wider sense and cannot be sustained unless Article 21 is satisfied. There must be a corrective legal procedure, fair and reasonable and effective. Such infraction will be arbitrary, under Article 14 if it is dependent on unguided discretion, unreasonable, under Article 19 if it is irremediable and unappealable, and unfair, under Article 21 if it violates natural justice. The string of guidelines in Batra [Sunil Batra v. Delhi Admn., (1978) 4 SCC 494 : 1979 SCC (Cri) 155] set out in the first judgment, which we adopt, provides for a hearing at some stages, a review by a superior, and early judicial consideration so that the proceedings may not hop from Caesar to Caesar. We direct strict compliance with those norms and institutional provisions for that purpose."

26. The expressions "ministerial", "ministerial office", "ministerial act", and "ministerial duty" have been defined by Black's Law Dictionary as under:

> "Ministerial, adj.—[16c] Of or relating to an act that involves obedience to instructions or laws instead of discretion, judgment, or skill the court clerk's ministerial duties include recording judgments on the docket.
>
> Ministerial office.—An office that does not include authority to exercise judgment, only to carry out orders given by a superior office, or to perform duties or acts required by rules, statutes, or regulations.
>
> Ministerial act.—An act performed without the independent exercise of discretion or judgment. If the act is mandatory, it is also termed a ministerial duty.
>
> Ministerial duty.—A duty that requires neither the exercise of official discretion nor judgment."

27. Prof. de Smith in his book on Judicial Review (Thomson Sweet & Maxwell, 6th Edn., 2007) refers to the meaning given by the courts to the terms "judicial", "quasi-judicial", "administrative", "legislative" and "ministerial" for administrative law purposes and found them to be inconsistent. According to the author "ministerial" as a technical legal term has no single fixed meaning. It may describe any duty the discharge whereof requires no element of discretion or independent judgment. It may often be used more narrowly to describe the issue of a formal instruction, in consequence of a prior determination which may or may not be of a judicial character. Execution of any such instructions by an inferior officer sometimes called ministerial officer may also be treated as a ministerial function. It is sometimes loosely used to describe an act that is neither judicial nor legislative. In that sense the term is used interchangeably with "executive" or "administrative". The tests which, according to Prof. de Smith delineate "judicial functions", could be varied some of which may lead to the conclusion that certain functions discharged by the courts are not judicial such as award of costs, award of sentence to prisoners, removal of trustees and arbitrators, grant of divorce to petitioners who are themselves guilty of adultery, etc. We need not delve deep into all these aspects in the present case. We say so because

pronouncements of this Court have over the past decades made a distinction between quasi-judicial function on the one hand and administrative or ministerial duties on the other which distinctions give a clear enough indication and insight into what constitutes ministerial function in contradistinction to what would amount to judicial or quasi-judicial function.

28. In Province of Bombay v. Khushaldas S. Advani [1950 SCC 551 : AIR 1950 SC 222] this Court had an occasion to examine the difference between a quasi-judicial order and an administrative or ministerial order. Kania, C.J. in his opinion, quoted with approval an old Irish case on the issue in the following passage: (AIR p. 224, para 5)

> "5. … the point for determination is whether the order in question is a quasi-judicial order or an administrative or ministerial order. In R. v. Dublin Corpn. [(1978) 2 LR Ir 371] LR Ir p. 376, May, C.J. in dealing with this point observed as follows:
>
> > 'It is established that the writ of certiorari does not lie to remove an order merely ministerial, such as a warrant, but it lies to remove and adjudicate upon the validity of acts judicial. In this connection, the term "judicial" does not necessarily mean acts of a judge or legal tribunal sitting for the determination of matters of law, but for the purpose of this question a judicial act seems to be an act done by competent authority, upon consideration of facts and circumstances, and imposing liability or affecting the rights of others.'
>
> This definition was approved by Lord Atkinson in Frome United Breweries Co. Ltd. v. Bath JJ [1926 AC 586 : 1926 All ER Rep 576 (HL)] AC p. 602, as the best definition of a judicial act as distinguished from an administrative act."

29. In Khushaldas Advani case [1950 SCC 551 : AIR 1950 SC 222] the Court was examining whether the act in question was a ministerial/administrative act or a judicial/quasi-judicial one in the context of whether a writ

of certiorari could be issued against an order under Section 3 of the Bombay Land Requisition Ordinance, 1947. The Court cited with approval the observation of Atkin, L.J. in R. v. Electricity Commr., ex p London Electricity Joint Committee Co. (1920) Ltd. [(1924) 1 KB 171 : 1923 All ER Rep 150 (CA)] that laid down the following test: (KB p. 205)

> "Wherever any body of persons having legal authority to determine questions affecting the rights of subjects, and having the duty to act judicially, act in excess of their legal authority they are subject to the controlling jurisdiction of the King's Bench Division exercised in these writs." (Khushaldas case [1950 SCC 551 : AIR 1950 SC 222] , AIR p. 225, para 6)

The Court in Khushaldas case [1950 SCC 551 : AIR 1950 SC 222] quoted with approval the decision in R. v. London County Council ex p Entertainments Protection Assn. Ltd. [(1931) 2 KB 215 (CA)] according to which a rule of certiorari may issue; wherever a body of persons

(1) having legal authority,
(2) to determine questions affecting rights of subjects, and
(3) having the duty to act judicially,
(4) act in excess of their legal authority—a writ of certiorari may issue. (Khushaldas case [1950 SCC 551 : AIR 1950 SC 222] , AIR p. 225, para 6)

30. Fazl Ali, J. in his concurring opinion in Khushaldas case [1950 SCC 551 : AIR 1950 SC 222] made the following observations as regards judicial and quasi-judicial orders: (AIR pp. 228-29, paras 16 & 22)

> "16. Without going into the numerous cases cited before us, it may be safely laid down that an order will be a judicial or quasi-judicial order if it is made by a court or a judge, or by some person or authority who is legally bound or authorised to act as if he was a court or a Judge. To act as a court or a Judge necessarily involves giving an opportunity to the party who is to be affected by an order to make a representation, making some kind of inquiry, hearing and weighing evidence, if any, and

> considering all the facts and circumstances bearing on the merits of a controversy, before any decision affecting the rights of one or more parties is arrived at. The procedure to be followed may not be as elaborate as in a court of law and it may be very summary, but it must contain the essential elements of judicial procedure as indicated by me. …
>
> ***
>
> 22. … The mere fact that an executive authority has to decide something does not make the decision judicial. It is the manner in which the decision has to be arrived at which makes the difference, and the real test is: Is there any duty to decide judicially?"

The detailed concurrent opinion of Das, J. in the same case, also agreed with the above test for determining whether a particular act is a judicial or an administrative one. Das, J., observed: (Khushaldas case [1950 SCC 551 : AIR 1950 SC 222] , AIR p. 257, para 163)

> "163. … The real test which distinguishes a quasi-judicial act from an administrative act is the third item in Atkin, L.J.'s definition, namely the duty to act judicially."

31. In State of Orissa v. Binapani Dei [AIR 1967 SC 1269] Shah, J. speaking for the Court observed that the duty to act judicially arose from the very nature of the function intended to be performed. It need not be shown to be superadded. The Court held: (AIR p. 1271, para 9)

> "9. … If there is power to decide and determine to the prejudice of a person, duty to act judicially is implicit in the exercise of such power."

32. In A.K. Kraipak v. Union of India [(1969) 2 SCC 262] , Hegde, J., as His Lordship then was, recognised that the dividing line between an administrative power and a quasi-judicial power was fast vanishing. What was important, declared the Court, was the duty to act judicially which implies nothing but a duty to act justly and fairly and not arbitrarily or capriciously. The Court observed: (SCC pp. 268-69, para 13)

> "13. The dividing line between an administrative power and a quasi-judicial power is quite thin and is being gradually obliterated. For determining whether a power is an administrative power or a quasi-judicial power one has to look to the nature of the power conferred, the person or persons on whom it is conferred, the framework of the law conferring that power, the consequences ensuing from the exercise of that power and the manner in which that power is expected to be exercised. Under our Constitution the rule of law pervades over the entire field of administration. Every organ of the State under our Constitution is regulated and controlled by the rule of law. In a welfare State like ours it is inevitable that the jurisdiction of the administrative bodies is increasing at a rapid rate. The concept of rule of law would lose its vitality if the instrumentalities of the State are not charged with the duty of discharging their functions in a fair and just manner. The requirement of acting judicially in essence is nothing but a requirement to act justly and fairly and not arbitrarily or capriciously. The procedures which are considered inherent in the exercise of a judicial power are merely those which facilitate if not ensure a just and fair decision. In recent years the concept of quasi-judicial power has been undergoing a radical change. What was considered as an administrative power some years back is now being considered as a quasi-judicial power."

33. To the same effect is the decision of this Court in Mohinder Singh Gill v. Chief Election Commr. [(1978) 1 SCC 405] where Krishna Iyer, J. speaking for the Court observed: (SCC p. 434, para 48)

> "48. Once we understand the soul of the rule as fair play in action—and it is so—we must hold that it extends to both the fields. After all, administrative power in a democratic set up is not allergic to fairness in action and discretionary executive justice cannot degenerate into unilateral injustice. Nor is there ground to be frightened of delay, inconvenience and expense, if natural justice gains access. For fairness itself is a flexible, pragmatic and relative concept, not a rigid,

ritualistic or sophisticated abstraction. It is not a bull in a china shop, nor a bee in one's bonnet. Its essence is good conscience in a given situation: nothing more—but nothing less. The 'exceptions' to the rules of natural justice are a misnomer or rather are but a shorthand form of expressing the idea that in those exclusionary cases nothing unfair can be inferred by not affording an opportunity to present or meet a case. Text book excerpts and ratios from rulings can be heaped, but they all converge to the same point that audi alteram partem is the justice of the law, without, of course, making law lifeless, absurd, stultifying, self-defeating or plainly contrary to the common sense of the situation."

34. Recently this Court in Jamal Uddin Ahmad v. Abu Saleh Najmuddin [(2003) 4 SCC 257] dealt with the nature of distinction between judicial or ministerial functions in the following words: (SCC p. 270, para 14)

> "14. The judicial function entrusted to a Judge is inalienable and differs from an administrative or ministerial function which can be delegated or performance whereof may be secured through authorisation.
>
> 'The judicial function consists in the interpretation of the law and its application by rule or discretion to the facts of particular cases. This involves the ascertainment of facts in dispute according to the law of evidence. The organs which the State sets up to exercise the judicial function are called courts of law or courts of justice. Administration consists of the operations, whatever their intrinsic nature may be, which are performed by administrators; and administrators are all State officials who are neither legislators nor judges.'

(See Constitutional and Administrative Law, Phillips and Jackson, 6th Edn., p. 13.) P. Ramanatha Aiyar's Law Lexicon defines judicial function as the doing of something in the nature of or in the course of an action in court. (p. 1015) The distinction between 'judicial' and 'ministerial acts' is:

> If a Judge dealing with a particular matter has to exercise his discretion in arriving at a decision, he is acting judicially; if on the other hand, he is merely required to do a particular act and is precluded from entering into the merits of the matter, he is said to be acting ministerially. (pp. 1013-14)

Judicial function is exercised under legal authority to decide on the disputes, after hearing the parties, may be after making an enquiry, and the decision affects the rights and obligations of the parties. There is a duty to act judicially. The Judge may construe the law and apply it to a particular state of facts presented for the determination of the controversy. A ministerial act, on the other hand, may be defined to be one which a person performs in a given state of facts, in a prescribed manner, in obedience to the mandate of a legal authority, without regard to, or the exercise of, his own judgment upon the propriety of the act done. (Law Lexicon, ibid., p. 1234.) In ministerial duty nothing is left to discretion; it is a simple, definite duty."

35. Applying the above principles to the case at hand and keeping in view the fact that any order that the Court may make on a request for transfer of a prisoner is bound to affect him prejudicially, we cannot but hold that it is obligatory for the court to apply its mind fairly and objectively to the circumstances in which the transfer is being prayed for and take a considered view having regard to the objections which the prisoner may have to offer. There is in that process of determination and decision-making an implicit duty to act fairly, objectively or in other words to act judicially. It follows that any order of transfer passed in any such proceedings can be nothing but a judicial order or at least a quasi-judicial one. Inasmuch as the trial court appears to have treated the matter to be administrative and accordingly permitted the transfer without issuing notice to the undertrials or passing an appropriate order in the matter, it committed a mistake. A communication received from the prison authorities was dealt with and disposed of at an administrative level by sending a

communication in reply without due and proper consideration and without passing a considered judicial order which alone could justify a transfer in the case. Such being the position the High Court was right in declaring the transfer to be void and directing the re-transfer of the undertrials to Bombay jail. It is common ground that the stay of the proceedings in three trials pending against the respondents has been vacated by this Court. Appearance of the undertrials would, therefore, be required in connection with the proceedings pending against them for which purpose they have already been transferred back to the Arthur Road Jail in Bombay. Nothing further, in that view, needs to be done by this Court in that regard at this stage.

36. That leaves us with the only other aspect, namely, whether the High Court was justified in directing the Government to hold an inquiry against those responsible for using excessive force and for dereliction of duty by the medical officer.

37. As noticed earlier by us the said direction has been issued entirely on the basis of the report submitted by the Sessions Judge. That report besides being preliminary is flawed in many respects including the fact that the same does not comply with the basic requirement of a fair opportunity of hearing being given to those likely to be affected. It is true that the statements of some of the jail officials have also been recorded in the course of the inquiry but that is not enough. Those indicted in the report were entitled to an opportunity to cross-examine those who alleged misconduct against them. Not only that the Sessions Judge has not named the officers responsible for the alleged use of excessive force which was essential for any follow-up or further action in the matter. The Sessions Judge has observed:

> "I am avoiding naming the officers of the jail against whom allegations of use of force are made as I am expected to give findings only on the aforesaid five points and as officers who took part in the action, officers who gave orders of or the officers who did not oppose the action cannot be segregated."

38. So also the report clearly states the officials concerned have not been allowed to examine any witness although a request was made by them to do so. Such being the position, some of the observations made by the High Court that give an impression as though the misdemeanour of the jail officers had been proved, do not appear to be justified. It was at any rate not for the High Court to record a final and authoritative finding that the force used by the jail authorities was excessive or that it was used for any extraneous purpose. It was a matter that could be determined only after a proper inquiry was conducted and an opportunity afforded to those who were accused of using such excessive force or abusing the power vested in them. Consequential directions issued by the High Court in directing the State Government to initiate disciplinary inquiry against all the officers involved in the incident were, therefore, premature. We say so because the question whether any disciplinary inquiry needs to be instituted against the jail officials would depend upon the outcome of a proper investigation into the incident and not a preliminary enquiry in which the investigating officer, apart from statements of the respondents, makes use of information discreetly collected from the jail inmates. The report of the Sessions Judge could in the circumstances provide no more than a prima facie basis for the Government to consider whether any further investigation into the incident was required to be conducted either for disciplinary action or for launching prosecution of those found guilty. Beyond that the preliminary report could not in view of what we have said above serve any other purpose.

39. In a country governed by the rule of law police excesses whether inside or outside the jail cannot be countenanced in the name of maintaining discipline or dealing with anti-national elements. Accountability is one of the facets of the rule of law. If anyone is found to have acted in breach of law or abused his position while exercising powers that must be exercised only within the parameters of law, the breach and the abuse can be punished. That is especially so when the abuse is alleged to have been committed under the cover of authority exercised by people in uniform. Any such action is also open to critical scrutiny and examination by the courts."

(Emphasis supplied)

The Apex Court considers an identical act of the concerned Court in shifting prisoners and holds that shifting of prisoners is neither an administrative act nor ministerial act, it is either a judicial order or a quasi-judicial order. The Apex Court further holds that if it is a judicial order or a quasi-judicial order, the prisoner against whom a request for transfer is made, it is obligatory on the part of the Court, to apply its mind fairly, and objectively, to the circumstances in which the transfer is prayed for and take a considered view, having regard to the objections the prisoner may have to offer. The Apex Court thus, held that prior to the passing of the order, the prisoner must be given an opportunity of being heard, as it would undoubtedly cause prejudice to the said prisoner. The other tenet is that, the order cannot suffer from non-application of mind. The impugned order is undoubtedly passed without giving any opportunity to the petitioner, the under-trial prisoner to file his objections, if any, nor the order impugned does bear even a semblance of application of mind.

11. The unmistakable inference that can be drawn from what the Apex Court has elucidated and such elucidation being

pitted to the facts of the case, is unsustainability of the order of shifting of the petitioner/accused No.14 from Bangalore, Central Prison to Belagavi, Central Prison, as it is done without any basis as there was no allegation against the petitioner that he had indulged in certain acts making himself the reason for such transfer, and is in violation of the principles laid down by the Apex Court in the case of ***SAEED SOHAIL*** *(supra)*.

12. The axe that needed to be fallen on accused No.2 – Darshan, has stretched to the petitioner as well, though he was far away from the company of accused No.2. There was no independent reason to shift the petitioner particularly to an Andheri Cell, as is alleged, and the allegations somewhat appear to be correct. It has, therefore, undoubtedly affected the right of the under-trial prisoner and requires to be reversed. The Apex Court in the afore-quoted judgment holds that in such cases, the under-trial prisoner who is shifted, should be directed to be re-shifted. I deem it appropriate to follow suit, which would mean that the order of shifting of the petitioner from Bangalore Central Prison to Belagavi Central Prison, being rendered unsustainable and as a consequence of

such un-sustainability, a direction to re-shift the petitioner to Bangalore Central Prison.

13. For the aforesaid reasons, the following:

O R D E R

(i) Writ Petition is allowed.

(ii) The order dated 27-08-2024 passed by the XXIV Additional Chief Metropolitan Magistrate, Bengaluru in Crime No.250 of 2024 stands quashed, *qua* the petitioner.

(iii) The petitioner is directed to be shifted back to Bangalore Central Prison forthwith.

(iv) It is made clear that this order would not enure to the benefit of any other accused in the crime. The observations made are applicable only to the case of the petitioner and not to any other accused.

I.A.No.2/2024 is disposed, as a consequence.

Sd/-
(M.NAGAPRASANNA)
JUDGE

NVJ
List No.: 3 Sl No.: 3
CT:SS